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**DA 97-2752**

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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MM Docket No. 97-253  
RM-9198

**Released: January 9, 1998**

**Reply Comment Date:** March 17, 1998

1. The Commission has before it the petition for rule making filed by OARA, Inc. ("petitioner"), licensee of Station KWSK(FM), Channel 295A, Daingerfield, Texas, requesting the substitution of Channel 295C3 for Channel 295A at Daingerfield; the reallocation of Channel 295C3 from Daingerfield to Ore City and the modification of Station KWSK(FM)'s license to specify Ore City as its community of license. Petitioner states it will apply for Channel 295C3 at Ore City, if reallocated.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file a competing expression of interest. See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). In support of its proposal, petitioner states that adoption of its proposal would significantly increase the coverage area of Station KWSK(FM), thus increasing the diversity of media voices available to the population it serves. Petitioner further notes that Ore City is a rural town located in northeast Texas with a 1990 U.S. Census population of 898 persons. The community was incorporated in 1951 and has an aldermanic form of government. The city's government consists of a mayor, five city council members and a city secretary. Petitioner advises that Ore City has its own police department, fire department, independent

school district, and city utilities. As for community activities, petitioner states the community has five churches, a Lion's Club, the Ore City Garden Club, the Ministerial Alliance, the Masonic Lodge, and several youth sports leagues, and a city park. Petitioner submits that operating on Channel 295C3 at Ore City will permit its station to provide aural reception service to 58,129 persons in an area of 3,051 square kilometers not now receiving Station KWSK(FM)'s signal, while no loss area will be created. In addition, Daingerfield will not be deprived of its only existing service since it will continue to be served by AM Station KEGG.

3. Based on the information before us, we are unable to determine whether petitioner's proposal would result in a preferential arrangement of allotments. Contrary to petitioner's contention, our engineering study indicates that a small loss area of approximately 74.2 square kilometers with a population of 771 persons will be created if petitioner's proposal is adopted. With respect to evaluating proposals to change the community of license, the Commission has stated, "The public has legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating a channel from one community to another." See *Change of Community*, *supra*. Therefore, we request that petitioner provide detailed information showing the areas and populations which will receive new service and the areas and populations which will lose service if Channel 295C3 is reallocated to Ore City. The study should also indicate the number of reception services which are now available within the gain and loss areas. In addition, petitioner needs to provide information as to the overall public interest benefits that would be advanced by removing Daingerfield's sole local FM service.

4. Channel 295C3 can be allotted to Ore City in compliance with the Commission's minimum distance separation requirements with a site restriction to accommodate petitioner's desired site.<sup>1</sup> As requested, we will propose to modify petitioner's license for Station KWSK(FM)'s to specify Ore City as the station's community of license. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept expressions of interest in the use of Channel 295C3 at Ore City or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

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<sup>1</sup> The coordinates for Channel 295C3 at Ore City, Texas, are 32-52-55 NL and 94-49-18 WL.

| City                | Channel No. |          |
|---------------------|-------------|----------|
|                     | Present     | Proposed |
| Daingerfield, Texas | 295A        | -        |
| Ore City, Texas     | -           | 295C3    |

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before March 2, 1998, and reply comments on or before March 17, 1998, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

James P. Riley  
Fletcher, Heald & Hildreth, P.L.C.  
11th Floor, 1300 North 17th Street  
Rosslyn, Virginia 22209-3801  
(Counsel for petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement.

Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

## APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be

accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW, Washington, DC.